the conclusion in the *Royal Indemnity case,* and it is believed that that decision was overruled by the principal case, settling the law in New York in accord with the authorities elsewhere.

MUNICIPAL CORPORATIONS—CITY MANAGER AN OFFICER AND NOT AN EMPLOYEE.—The city of Hot Springs, Arkansas, adopted the provisions of Act No. 114 of the Acts of 1917, which brought them under the commission form of city government, and the plaintiff was appointed city manager in accordance with the act. This act in Sec. 33 provides, among other things, that the city manager need not be a resident of the city at the time of his appointment. In this action,—which is to determine which one of two appointed boards of health is the legal one,—it is contended that the whole of Act No. 114 is unconstitutional since the state constitution in Art. 19, Sec. 3 provides that no person shall be elected or appointed to fill an *office* who does not possess the qualifications of an elector. One of the qualifications of an elector is that he shall be a resident. *Held,* that a city manager is an officer and comes under the constitutional provision as to qualifications of an officer, but that the non-residence feature of the act can be stricken out since the legislature would have passed the act without it. *McClendon* v. *Board of Health,* (Ark., 1919) 216 S. W. 289.

This case involves the much mooted question as to whether a certain position is a public office or merely an employment. Employment is the broader term and includes a public office, but all employments are not public offices. *Rickers Petition,* 66 N. H. 207, 232; *U. S.* v. *Maurice,* 2 Brock. (U. S.) 96. It has sometimes been laid down as a general rule, that a position is a public office when it is created by law, with duties cast on the incumbent which involve an exercise of some portion of the sovereign power, and in the performance of which, the public is concerned and which also are continuing in their nature and not occasional or intermittent. *Groves* v. *Barden,* 169 N. C. 8; *U. S.* v. *Heinze,* 177 Fed. 770; (cannot be occasional service); *Scully* v. *U. S.,* 193 Fed. 185 (must be created by law); *Ill. Industrial Home for the Blind* v. *Dreyer,* 150 Ill. App. 574; (position created by law); *Blynn* v. *The City of Pontiac,* 185 Mich. 35 (performance of duties a matter of public concern); *State Tax Commission* v. *Harrington,* 126 Md. 157 (an office involves a delegation to the individual of some of the sovereign functions of government to be exercised by him for the benefit of the public). However the courts have ordinarily, in the different cases considered by them, passed upon the facts of each case and then reached a conclusion that the necessary elements were or were not present. *State Tax Commission* v. *Harrington, supra; Fredericks* v. *Board of Health,* 82 N. J. L. 200. In the principal case the court relied upon *Throop* v. *Langdon,* 40 Mich. 673, 682, where Judge Cooley said, "the office is distinguished from the employment in the greater importance, dignity, and independence of the position; in being required to take an official oath, and perhaps to give an official bond, etc." This view is to a great extent like the earlier authorities, *United States* v. *Hartwell,* 6 Wall. 385; *Hall* v. *Wisconsin,* 103 U. S. 5, although some of the recent cases have considered the absence or presence of a bond along with

other circumstances in determining whether a position was an employment or an office. *State Tax Commission* v. *Harrington, supra; Reising* v. *Portland,* 57 Ore. 295; *Bankers Surety Co.* v. *Newport,* 162 Ky. 473. In the same way the duty to take an oath has been considered in some late cases, *Blynn* v. *Pontiac, supra;* but the fact that an employee does take an oath will not make him an officer. *Scully* v. *U. S., supra; Jones* v. *Battle Creek,* 193 Mich. 1. It might perhaps be urged that the city manager in the principal case was not an officer, from the foregoing case, since he could be removed at any time by the commission. However duration of term was held not essential in *Blynn* v. *Pontiac, supra,* although it has been considered with other circumstances in holding a position an employment and not an office. *Cross* v. *Fisher,* 132 Tenn. 31; *Bilger* v. *State,* 63 Wash. 457; *Jones* v. *Botkin,* 92 Kan. 242; *People* v. *Ry. Co.,* 267 Ill. 142. However the main difficulty is in failing to distinguish between a duration of an office, as such, and the duration of the term of the incumbent. The former seems to be necessary and the latter not.

RESTRAINT OF TRADE—SHERMAN ACT—CONTRACTS AFFECTING THE RESALE PRICE.—Defendant was a manufacturer of pneumatic tire valves, gauges, etc. It required all dealers purchasing from it to contract in writing not to resell below stated prices. On this account it was indicted for engaging in a combination rendered criminal by the Sherman Act. The District Court sustained a demurrer. *Held,* demurrer should have been overruled. *United States* v. *A. Schrader's Sons, Inc.,* — Sup. Ct. Rep. —.

The court distinguishes this case from *United States* v. *Colgate & Co.,* 250 U. S. 300, on the ground that the Colgate Company was not charged with making contracts restricting the resale price, but only with refusing to sell to dealers who would not adhere to the resale prices fixed by the company. A *dictum* in *Eastern States, etc. Ass'n.* v. *United States,* 234 U. S. 600, accords with the decision of the *Colgate case.* The decision of the principal case is consistent with the Supreme Court's holding in civil suits, that systematic attempts to control resale or use of a chattel by its owner are invalid, even though the chattel is made according to a secret process. *Dr. Miles Medical Co.* v. *John D. Park & Son,* 230 U. S. 303, or embodies an invention protected by patent, *Boston Store* v. *American Gramophone Co.,* 246 U. S. 8; *Straus* v. *Victor Talking Machine Co.,* 243 U. S. 490. For a discussion of these subjects and other cases see 15 MICH. L. REV. 581; 16 MICH. L. REV. 127-129. That it is not an infraction of the Sherman Act for a patentee systematically and by written contracts to restrict the acts of a *lessee* of chattels, although such restrictions affect interstate commerce, see, *United States* v. *United Shoe Machinery Co.,* 247 U. S. 32; *United States* v. *Winslow,* 227 U. S. 202.

SALES—TRADING WITH THE ENEMY—EFFECT OF WAR UPON CONTRACT FOR SALE OF GERMAN WAR BONDS.—Prior to our entrance into the war with Germany, plaintiff and defendant, both "citizens, or, at least, residents of the United States," entered into a contract for the purchase and sale of 10,000